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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Criminal Appeal No...178...of 2001

Appellant	:	Meeluram @ Meeleshwer, Aged 26 years S/o Kejuram Sahu R/o Village Jeevangarh P.S. Mahasamund (Chhattisgarh)

VERSUS

Respondent	:	State of Chhattisgarh Through S.H.O., P.S. Mahasamund, Distt. Mahasamund

MEMORANDUM OF APPEAL UNDER SECTION 374(2) Cr. P. CODE

(18)

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:

Hon'ble Shri L.C.Bhadoo, J &
Hon'ble Shri V.K. Shrivastava, J.

4-10-2006

Shri Anant Bajpai, counsel for the appellant.

Shri U.N.S. Deo, Addl. Public Prosecutor for the State.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 28-11-2000 passed by the 2nd Additional Sessions Judge, Mahasamund, in Sessions Trial No.105/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of Dulari Bai, his wife, under Section 302 of the Indian Penal Code, convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo one month's Rigorous Imprisonment.

The case of the prosecution, in brief, is that in the morning of 29-11-1999 accused Meeluram @ Meeleshwar along with his wife Dulari Bai went to the agricultural field of his father to reap the crop

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of rice (*kodo*), when till 12.00 noon the accused and his wife did not return, his father Keju Ram (PW-2) went in search of accused and his wife. He saw that Dulari Bai was lying in dead condition and Meeluram was also lying. The accused demanded water from his father Keju Ram and on enquiry, the accused disclosed Keju Ram that he has committed murder of his wife Dulari Bai by attacking with axe, thereafter to commit suicide he had jumped down from the tree as a result of which he has sustained fracture. Keju Ram immediately returned to the village, informed the village Kotwar Surendra Kumar and gave merg intimation under Ex-P/3 in the Police Station Mahasamund. Thereafter Vishram Sahu (PW-1) on coming to know about the incident, also went to the place of incident, on enquiry the accused informed him also that his wife Dulari Bai was insisting for going to her parents place, feeling insulted and harassed, he attacked her with axe and committed her murder. Vishram Sahu (PW-1) gave First Information Report under Ex-P/1 in the Police Station, Mahasamund.

The Station House Officer, Police Station Mahasamund, after registering the case for the commission of offence under Section 302 of the Indian Penal Code, left for scene of occurrence, after giving notices (Ex-P/2) to the Panchas inquest report of the body of Dulari

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Bai was prepared. The accused while in the Police custody gave memorandum, under Ex-P/6, regarding the weapon of offence and in pursuance of that the axe was taken into possession from the field vide Ex-P/7. Two sickles were also taken into possession vide Ex-P/8. The site plan of place of occurrence was prepared vide Ex-P/9. The broken piece of glass bangle, one necklace and one broken bone piece of the deceased were taken into possession under Ex-P/10. The blood stained soil and plain soil were taken into possession under Ex-P/11. The body of the accused was examined by the Investigating Officer and report was prepared vide Ex-P/13. Clothes of the accused were taken into possession under Ex-P/14. On the request of the Police, Executive Magistrate, A.R. Dhurve (PW-14) recorded the dying declaration of the accused vide Ex-P/17. The clothes of the deceased were taken into possession under Ex-P/20. The site plan was prepared under Ex-P/22. Body of Dulari Bai was sent to the Government Hospital, Mahasamund for postmortem where Dr. N.K. Mandape (PW-23) conducted the postmortem, prepared the report vide Ex-P/24. The Doctor opined that cause of death was shock due to severe hemorrhage, due to cut through the neck and blood vessels trachea. The recovered articles were sent for chemical examination to the

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Forensic Science Laboratory, Raipur from where the report Ex-P/33 was received.

After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Mahasamund, who in turn committed the case to the Sessions Judge, Raipur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 25 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he said that he along with his wife Dulari Bai went to the field for the purpose of reaping the crop of rice (*Kodo*), where some unknown person came and attacked him as a result of which he became unconscious and thereafter that person attacked his wife, as he was in unconscious stage, he was not aware about the person who committed the murder of his wife.

Learned Additional Sessions Judge after hearing the Additional Public Prosecutor and counsel for the accused/appellant, convicted and sentenced accused/appellant as mentioned in para one of this judgment.

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We have heard learned counsel for the parties.

Shri Bajpai, learned counsel for the accused/appellant, has not disputed the homicidal death of Dulari Bai. Apart from that, from the evidence of Dr. N.K. Mandape (PW-23) who has stated that on 30-11-1999 he conducted the postmortem on the body of Dulari Bai and found that there were abrasions on the elbows of both the hands, there was incised wound on the neck in the size of 3 x 3 x 2½" , the margins of the wound was clear cut, the trachea was cut and the throat was also cut. Carotid artery and jugular veins of the neck were also cut and clotted blood was present on the wound. On dissection, it was found the throat and the trachea were cut. In his opinion, the cause of death was shock as a result of excessive bleeding. The blood vessels and respiratory pipe were found cut. Report is Ex.-P/24. Therefore, in view of the evidence of Doctor, it is established that the death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in committing murder of his wife Dulari Bai is concerned, learned counsel for the accused/appellant argued that the evidence of so called eyewitness namely Narendra (PW-12) is not worth reliance and from his evidence it cannot be said that he in fact witnessed the accused while committing the crime. He also argued that from the evidence of A.R.

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Dhruve, Executive Magistrate (PW-14), it appears that the dying declaration of the accused was recorded while he was in the police custody; therefore, the said extra judicial confession in the form of dying declaration was not admissible in evidence. He also argued that the weapon of offence was recovered from the open field, therefore, it cannot be held that the recovery was at the instance of the accused.

On the other hand, Shri Deo, learned counsel for the State, supported the judgment of the trial Court.

As far as the evidence of Narendra (PW-12) is concerned, he has stated that on the fateful day he was going towards Jeevangarh in search of his bullock; when he reached Kamharmuda he heard the scream of a lady '*save save*' and when he reached near the place, he saw that the accused carrying axe in his hand was running away after committing the murder of some one. Blood was oozing out from the body of Dulari Bai and after seeing her condition, he became frightened. In the cross-examination, he has stated that the screams of the lady became silent after some time, he saw the accused from behind; at that time he was carrying the axe and he also saw him while attacking some one with the axe. At that time, the accused was wearing lungi and shirt. Deceased Dulari Bai and the accused were

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well known to him. From the above evidence of Narendra (PW-12), it can be said that in fact this witness actually did not see the accused while attacking the deceased. This witness has stated in para 5 of his evidence that he saw the accused when he was running away, whereas the father of the accused Keju Ram (Pw-2), who went in search of accused and his wife, has stated that when he reached the field he saw that the accused and the deceased both were lying, there was injury on the neck of Dulari Bai whereas bone of the hand of the accused was broken, therefore, as per the prosecution case after committing the murder of his wife accused jumped down from a tree as a result of which he sustained the fracture of his hand and he was also lying on the field, therefore, the evidence of Narendra (PW-12) to the extent that he saw the accused running away cannot be believed and his evidence does not inspire confidence of the Court, hence no reliance can be placed on his evidence.

As far as extra judicial confession made by the accused before Executive Magistrate A.R. Dhurve (PW-14) as also Narendra Prakash (PW-19) and Vishram (PW-1) is concerned, A.R. Dhurve (PW-14) has stated that on 30-11-1999 on the request of the Police, he recorded dying declaration of the accused at about 9.35 a.m. which is Ex.P/17 and in which the accused confessed that there was some dispute

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earlier to the incident, Panchayat was convened on 26th & 27th November, 1999. On the fateful day, the accused along with his wife went to the field where the deceased was insisting for going to her parents' place, therefore, the accused attacked 3-4 times with the axe on the neck of the deceased and thereafter, he, after climbing the tree jumped down in order to commit suicide and thereby he sustained the fracture of the hand. As far as the Police custody is concerned, in para 12 of cross-examination, this witness has stated that at that time the police was standing in the corridor and from where the place where he was recording the statement of the accused was not visible and he has clearly stated that inside where he was recording the statement no one was present, therefore, it cannot be said that when the Executive Magistrate was recording statement of the accused, the police was present there. Apart from that, Section 26 of the Indian Evidence Act, which envisages that the confession by accused while in custody of police not to be proved against him. The reading of Section 26 of the Act makes it clear that such confession made by any person whilst he is in the custody of a police officer, shall not be proved as against such person, unless it be made in the immediate presence of a Magistrate. In this case, the Magistrate himself had recorded the statement of the accused, therefore, the

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extra judicial confession made by the accused before the Magistrate was admissible in evidence. Whether this extra judicial confession was voluntary and true Vishram Sahu (PW-1), uncle of the deceased, has stated in para 7 of his evidence that when he reached the place of occurrence he saw that there was injury on the neck of Dulari Bai and the accused was lying with broken hand and injury on the waist, on enquiry the accused disclosed him that he had assaulted Dualri Bai with axe. Similarly, Narendra Prakash (PW-19), who is a Sarpanch of the village has stated that on receiving the information when he reached to the place of occurrence he saw the body of Dulari Bai and at a some distance the accused was lying under the bush, when he enquired about the incident from the villagers then they asked him that he should enquire from the accused, after going near the accused, he enquired from the accused, on which the accused disclosed that his wife was insisting for going to her parents' place and even on his persuasion she was not ready to stay back, therefore, he committed the murder of his wife. This witness has not been cross-examined on this aspect, therefore, the written extra judicial confession (Ex-P/17) made before the Executive Magistrate coupled with oral extra judicial confession made before Vishram Sahu (PW-1) and Narendra Prakash (PW-19) establishes the fact that the accused

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made extra judicial confession before these persons, which was voluntary and true. In order to ascertain the truthfulness of the extra judicial confession, the circumstantial evidence available in this case is that the accused left in the morning along with his wife for the purpose of reaping the crop of rice (*Kodo*) and when they did not return till 12 noon, father of the accused Keju Ram (PW-2), went in search of his son and daughter-in-law, when he reached the field, he saw that the body of Dulari Bai as also the accused was lying in injured condition and with broken hand and he has not been able to explain satisfactorily how he sustained that injury even though in his statement under Section 313 of the Code of Criminal Procedure, he tried to explain that when he along with his wife went to the field somebody came and attacked him as a result of which he became unconscious and thereafter the unknown person attacked his wife and committed her murder. This explanation, from perusal of the record *prima facie* appears to be afterthought because to this extent no other witness has been cross-examined by the defence and this explanation given by the accused for the first time at the time of recording his statement under Section 313 of the Cr.P.C. and that was contrary to the extra judicial confession made by him before A.R. Dhurve, Executive Magistrate (PW-14), Vishram Sahu (PW-1) and

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Narendra Prakash (PW-19), therefore, the circumstances i.e. the accused left his house along with the deceased and thereafter he was found in injured condition near the body of the deceased further corroborates the extra judicial confession made by him.

For the foregoing reasons, we are of the considered opinion that the prosecution has established the case against the accused based on the circumstantial evidence beyond reasonable doubt. From the above circumstantial evidence, the irresistible conclusion can safely be drawn that the accused was the author of the crime in question and there was no possibility of coming in between any third person. We do not find any illegality or infirmity in the judgment of the trial Court.

In the result, the appeal being devoid of merit, is liable to be dismissed and is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K. Shrivatava
Judge

Gowri

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9.10.06 28.11.06